

and they are scheduled to take effect in less than the specified sixty days in violation of the clear terms of the regulatory review statute.

The new Price Cap rules, for example, unquestionably will have an impact of more than \$100 million per year. It also is clear that the order is not “a rule promulgated under the Telecommunications Act of 1996.” 5 U.S.C. § 804(2)(C). Indeed, the *Price Cap Order* is a 1994 docket that predates the 1996 Act. Similarly, the *Access Charge Order* certainly cannot be characterized as promulgation rules “under the Telecommunications Act of 1996,” 5 U.S.C. § 804(2)(C), as nothing in the Telecommunications Act mandates access reform.

It follows that issuance of the stay requested by the Joint Petitioners will promote the public interest by (i) ensuring that the FCC's decisionmaking is consistent with all legal requirements, (ii) avoiding a conflict with the mandate of the Eight Circuit, (iii) avoiding the disruption of competitive developments in local exchange markets, and (iv) permitting compliance with the Congressional Review Procedures Act.

CONCLUSION

For the foregoing reasons, GTE and its affiliated telephone companies support the Joint Petition of Southwestern Bell, Pacific Bell, and Nevada Bell, and respectfully request that the FCC stay its *Access Charge Order* and the *Price Cap Order* as described herein.

Respectfully submitted,

GTE SERVICE CORPORATION,
on behalf of its affiliated operating
companies

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Its Attorneys

June 9, 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

| | | |
|------------------------------|---|-----------------------|
| In the Matter of |) | |
| Access Charge Reform |) | CC Docket :No. 96-262 |
| |) | |
| Price Cap Performance Review |) | CC Docket No. 94-1 |
| for Local Exchange Carriers |) | |

AFFIDAVIT OF ORVILLE D. FULP

I, Orville D. Fulp, being duly sworn, hereby declare the following;

1. I am Director-Network Access Services for GTE Telephone Operations ("GTE"). I am responsible for the development, introduction, and management of GTE network access services in the interexchange carrier market segment. I have over 10 years experience with GTE. During that time I have held various positions, primarily related to pricing, regulatory and product management functions.

2. In my capacity as Director-Network Access Services, I am familiar with the impact on GTE's telephone operating companies of the Commission's decisions that are the subject of GTE's comments to which this Affidavit is attached.

3. The Commission's rule change (§ 61.45(d)(2)(ii)) which requires the retention of the sharing obligation for the earnings prior to July 1, 1997, in addition to the increase in the X-factor to 6.5 percent (and the requirement to recalculate the PCIs "as if" the 6.5 percent X-Factor were in effect for the 1996 annual tariff filing) significantly increases the reductions that GTE must make in the 1997 annual access tariff filings for its tariff entities. Prior to the Commission's *Price Cap Order*, GTE had the option of selecting either a 4.0 percent, 4.7 percent or 5.3 percent productivity factor (§ 61.45(b)(1) and § 61.45(c)) for the Traffic Sensitive, Trunking and Common Line baskets in order to calculate

the annual access tariff filings impact. The first two options required GTE's tariff entities to share earnings if they had rates of return above specified levels. The third option, a productivity factor of 5.3 percent, did not require any sharing.

4. For the 1996 annual access tariff filing, some of GTE's tariff entities selected the 4.0 percent factor with a sharing requirement and others selected the 5.3 percent factor with no sharing requirement.

5. Some of the tariff entities that selected a 4.0 percent factor incurred sharing obligations for earnings during the period July 1, 1996, through December 31, 1996. Any additional sharing obligations for the period January 1, 1997, through June 30, 1997, have not been determined as the financial information required to calculate any obligations will not be available until the end of 1997. If sharing obligations for this latter period exist, those obligations would be reflected in the form of PCI reductions for the 1998 annual access year.

6. The attached chart shows the impact of the FCC's change in the price cap plan. This chart accurately reflects how GTE can expect to be harmed as a result of these changes.

7. Prior to calculating the effects of the new, single 6.5 percent X-Factor back to the 1996 annual tariff filing, GTE would have to make a \$196.4 million reduction in the upcoming 1997 annual access filing. This amount includes the X-Factor impact using 4.0 and 5.3 percent options, the June 3, 1997, within-band filing effects, the impact of CCL reductions due to the increased multiline business SLC cap to \$9, and the impact of the LTS exogenous adjustment (as required by NECA's May 21, 1997, update).

8. GTE's sharing obligations for 1996 earnings are treated as exogenous adjustments in the price cap formula on a tariff entity basis. Using the sharing levels currently in effect for the 4.0 percent productivity option, the impact of this sharing obligation is \$19.2 million (for the

time period July 1, 1996 to December 31, 1996) of the expected \$196.4 million reduction discussed above.

9. The *Price Cap Order* directs GTE to increase the X-Factor to 6.5 percent in all tariff entities (back to July 1, 1996, as stated above) in addition to retaining any sharing obligations associated with the previous selection of the 4.0 percent X-Factor, which will be reflected in the price cap formula as an exogenous adjustment.

10. GTE's estimated reduction for the 1997 annual access filing that reflects both the retention of the 4.0 percent X-Factor selection sharing obligation *and* the 6.5 percent X-Factor increase back to July 1, 1996, for all tariff entities is \$260.4 million.

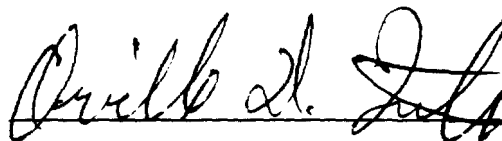
11. GTE's estimated reduction for the 1997 annual access filing that reflects: 1) retention of the sharing obligation incurred for selecting the 4.0 percent X-Factor option in several tariff entities; 2) the retention of the 4.0 percent X-Factor option for those same tariff entities (not increasing the X-Factor to 6.5 percent in 1996); 3) an increase in the X-Factor to 6.5 percent for all other tariff entities in 1996 (those previously selecting 5.3 percent); and 4) an increase to 6.5 percent for all tariff entities in 1997; is \$228.7 million.

12. The incremental difference between the two scenarios is \$31.7 million. In effect, the impact of the *Price Cap Order* is requiring GTE to reduce its rates by this amount.

13. If GTE is required to adjust its PCIs for the new 6.5 percent X-Factor recalculated back to July 1, 1996, and to reflect sharing obligations associated with a 4.0 percent X-Factor selection for the same period as required by the *Price Cap Order*, it cannot expect to recoup these lost revenues at a future date if the FCC's decision is reversed on reconsideration or on appeal. Even if the FCC permits GTE to increase its rates at some future date, it may not be able to maintain those rates in the face of growing competition in the market for access services. GTE's access services increasingly are becoming subject to competitive pressures, particularly in

its California and Florida markets. And, it is in these markets where most of the price cap impact will occur. As GTE demonstrated in its comments filed in the above-captioned dockets, it is subject to significant and increasing competition for both switched and special access services. These competitive pressures can be expected to increase in the future as a result of the interconnection provisions of the 1996 Telecommunications Act and as a result of competitors continued construction of access facilities in GTE territories. This competition will effectively preclude GTE from increasing its rates in the future above the then current levels as would be necessary to recoup the losses that will be sustained by the instant order.

I declare under penalty of perjury under the laws of the United State of America that the foregoing is true and correct.



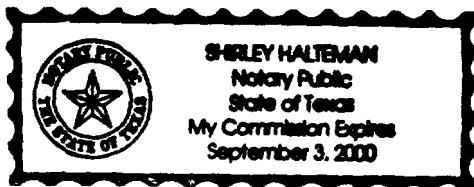
Orville D. Fulp

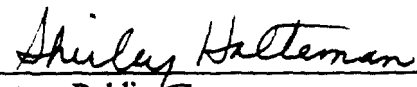
Dated: 6/9/97

STATE OF TEXAS

COUNTY OF DALLAS

SUBSCRIBED AND SWORN TO BEFORE ME by the said Orville D. Fulp on this 9th day of June, 1997.




Notary Public

Appendix
(all figures in millions)

| | INCREMENTAL REDUCTIONS | ANNUAL REDUCTIONS |
|--|-----------------------------------|------------------------------|
| Reductions required in April 2, 1997, TRP filing (w/ 4.0 and 5.3 % X-Factors) | | \$ 88.9 |
| Impact of June 3, 1997, Within Band Filing | \$98.7 | |
| Impact of CCL reductions due to increase in Multiline Business SLC cap to \$9.00 (Access Reform Order) | 12.6 | |
| Impact of LTS Exogenous Adjustment issued by NECA on May 21, 1997 | (3.8) | |
| Total Reductions that would have been filed in the 1997 adjusted TRP absent 6.5 % X-Factor adjustments | | \$ 196.4 |

VARIOUS SCENARIOS OF THE *PRODUCTIVITY FACTOR ORDER*

1) 6.5 % X-FACTOR IN 1996 AND 1997 FOR ALL TARIFF ENTITIES

| | | |
|--|-------------|----------|
| Impact of Increased X-Factor in 1996 Tariff Year | \$ 38.9 | |
| Impact of Increased X-Factor in 1997 Tariff Year | <u>25.1</u> | |
| Total Impact of 6.5 % X-Factor | 64.0 | |
| Total Reduction Required for this Scenario | | \$ 260.4 |

2) 4.0 % X-FACTOR IN 1996 WITH SHARING OBLIGATION FOR PRIOR 4.0 % TARIFF ENTITIES AND 6.5 % X-FACTOR IN 1996 FOR PRIOR 5.3 % TARIFF ENTITIES -- ALL TARIFF ENTITIES HAVE 6.5 % IN 1997

| | | |
|--|-------------|-----------------|
| Impact of Increased X-Factor for 5.3 % Tariff Entities in 1996 Tariff Year | \$ 6.8 | |
| Impact of Increased X-Factor for All Tariff Entities in 1997 Tariff Year | <u>25.5</u> | |
| Total Impact of 4.0 % with Sharing and 6.5 % without Sharing | 32.3 | |
| Total Reduction Required Retaining 4.0 % for 4.0 % Tariff Entities and 6.5 % for 5.3 % Tariff Entities | | <u>\$ 228.7</u> |
| Excess Reductions Resulting from the <i>Price Cap Order</i> | | \$ 31.7 |

CERTIFICATE OF SERVICE

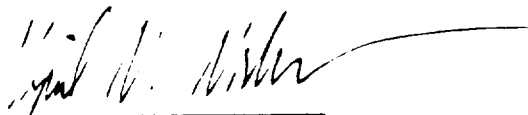
I hereby certify that on this 9th day of June, 1997, I caused copies of the foregoing Comments of GTE Service Corporation in Support of Southwestern Bell, Pacific Bell, and Nevada Bell Joint of Petition for Partial Stay to be mailed via first-class prepaid mail to the following:

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Vipul N. Nishawala

* Via hand delivery